

MONTANA LEGISLATIVE HISTORY

Chapter 301 19 99

Bill H _____ S 416

Original bill & history C

H. Committee on Judiciary

Hearing Date(s) 3-22 1 C

① 3-15 ✓ c

_____ C

_____ C

Date Out _____ C

S. Committee on Judiciary

Hearing Date(s) 2-15 ✓c

C

_____ C

C

Did this bill originate in an interim committee? Yes No

Committee _____

Report

LEGISLATIVE HISTORIES

The 1997 Montana Legislature dramatically changed the nature of legislative minutes. This altered format continues with the 1999 legislative minutes. The minutes from House committees are extremely sparse in content, offering no substantive information from which to glean legislative intent. The Senate committees' minutes are fuller in content.

Exhibits, which include written statements, attendant information, roll call votes, roll call attendance, a list of those from the public who were present, and specific action taken on legislative bills, will be available only through the Historical Society Archives, 444-4774, and from a CD-ROM produced by the Legislative Services Division, 444-3064.

Just as in the 1997 legislative session, the 1999 House and Senate committee hearings were recorded. For information on accessing the tapes, or purchasing them, contact the Archives, 444-4774.

If you have concerns over the format of these legislative minutes, it is suggested that you contact your state legislators.

2/12	Fiscal Note Received		
2/13	Fiscal Note Signed		
2/15	Fiscal Note Printed		
2/17	Committee Executive Action--Bill Passed	9	1
2/17	Committee Report--Bill Passed		
2/19	2nd Reading Passed	36	12
2/20	3rd Reading Passed	37	11

Transmitted to House			
2/22	Referred to Local Government		
3/11	Hearing		
3/12	Committee Executive Action--Bill Concurred	12	1
3/12	Committee Report--Bill Concurred		
3/20	2nd Reading Concurred	81	18
3/22	3rd Reading Concurred	77	23

Returned to Senate			
3/23	Sent to Enrolling		
3/23	Returned from Enrolling		
3/25	Signed by President		
3/26	Signed by Speaker		
3/29	Transmitted to Governor		
4/05	Signed by Governor		
4/06	Chapter Number Assigned		
	Chapter Number 252		
	Effective Date: 10/01/1999 - All Sections		

SB 416 Introduced by Grosfield LC1503 Drafter: Petesch

Clarify That after a Verdict or Finding of Guilty, a Court May Order a New Trial If Required in the Interest of Justice;...

By Request of Senate Judiciary Standing Committee

2/09	Introduced and 1st Reading		
2/09	Referred to Judiciary		
2/15	Hearing		
2/17	Committee Executive Action--Bill Passed	8	0
2/17	Committee Report--Bill Passed		
2/20	2nd Reading Passed	48	0
2/22	3rd Reading Passed	49	0

Transmitted to House			
3/02	Referred to Judiciary		
3/15	Hearing		
3/22	Committee Executive Action--Bill Concurred as Amended	20	0
3/23	Committee Report--Bill Concurred as Amended		
3/26	2nd Reading Concurred	91	6
3/27	3rd Reading Concurred	95	4

Returned to Senate with Amendments			
3/30	2nd Reading House Amendments Concurred	50	0
3/31	3rd Reading Passed as Amended by House	50	0
4/01	Sent to Enrolling		
4/06	Returned from Enrolling		
4/08	Signed by President		
4/09	Signed by Speaker		
4/09	Transmitted to Governor		

4/12	Signed by Governor		
4/14	Chapter Number Assigned		
	Chapter Number 301		
	Effective Date: 10/01/1999 - All Sections		

SB 417 Introduced by Waterman LC1296 Drafter: Fo

Require Boards of County Commissioners to Budget and Expend Funds for inmat Medical Costs of Inmates in County Detention Facilities;...

12/17	Fiscal Note Needed		
2/09	Introduced and 1st Reading		
2/09	Referred to Local Government		
2/09	Fiscal Note Requested		
2/09	Fiscal Note Received		
2/09	Fiscal Note Signed		
2/10	Fiscal Note Printed		
2/11	Hearing		
2/17	Committee Executive Action--Bill Passed		10
2/17	Committee Report--Bill Passed		
2/20	2nd Reading Passed	27	2
2/22	3rd Reading Passed	30	2

Transmitted to House			
3/02	Referred to Local Government		
3/23	Hearing		
3/24	Committee Executive Action--Bill Concurred as Amended		13
3/24	Committee Report--Bill Concurred as Amended		
3/29	2nd Reading Concurred	69	2
3/30	3rd Reading Concurred	72	2

Returned to Senate with Amendments			
4/08	2nd Reading House Amendments Concurred		50
4/09	3rd Reading Passed as Amended by House		42
4/12	Sent to Enrolling		
4/13	Returned from Enrolling		
4/17	Signed by President		
4/20	Signed by Speaker		
4/20	Transmitted to Governor		
4/27	Signed by Governor		
4/29	Chapter Number Assigned		
	Chapter Number 500		
	Effective Date: 10/01/1999 - All Sections		

SB 418 Introduced by Swysgood, et al. LC1348 Drafter: Kurt

Clarify the Scope of Bridge Easements on County and State Rights-of-way;...

2/09	Introduced and 1st Reading		
2/09	Referred to Fish and Game		
2/16	Hearing		
2/19	Tabled in Committee		
3/01	Missed Deadline for General Bill Transmittal		

SB 419 Introduced by Shea, et al. LC1584 Drafter: MacMask

Clarify That Certain Publicly Owned Licenses Are Eligible for Gamblin Activities;...

1999 Montana Legislature

About Bill -- Links

SENATE BILL NO. 416

INTRODUCED BY L. GROSFIELD

BY REQUEST OF THE SENATE JUDICIARY STANDING COMMITTEE



AN ACT CLARIFYING THAT AFTER A VERDICT OR FINDING OF GUILTY, A COURT MAY ORDER A NEW TRIAL IF REQUIRED IN THE INTEREST OF JUSTICE; AND AMENDING SECTION 46-16-702, MCA.

WHEREAS, in State v. Brummer, 1998 MT 11, ___ Mont. ___, 953 P.2d 250, 55 St. Rep. 30 (1998), the Montana Supreme Court determined that section 46-16-702, MCA, created an ambiguity as to whether a court could order a new trial sua sponte.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 46-16-702, MCA, is amended to read:

"46-16-702. Motion for a new trial. (1) Following a verdict or finding of guilty, the court may grant the defendant a new trial if required in the interest of justice. A new trial may be ordered by the court without a motion or may be granted after motion and hearing.

(2) The motion for a new trial must be in writing and must specify the grounds for a new trial. The motion must be filed by the defendant within 30 days following a verdict or finding of guilty and be served upon the prosecution.

(3) On hearing the motion for a new trial, if justified by law and the weight of the evidence, the court may:

- (a) deny the motion;
- (b) grant a new trial; or

(c) modify or change the verdict or finding by finding the defendant guilty of a lesser included offense or finding the defendant not guilty."

- END -

Latest Version of SB 416 (SB0416.ENR)
Processed for the Web on April 7, 1999 (10:50AM)

New language in a bill appears underlined, deleted material appears stricken.

Sponsor names are handwritten on introduced bills, hence do not appear on the bill until it is reprinted. See the status of the bill for the bill's primary sponsor.

bill. Mr. Moore explained that in estates they look at transfers two years prior to death. The time that a judgment comes about may not be near the time at which the harm occurred. If, during the term of the litigation, the person is intentionally planning to secure these funds, he may be able to accumulate \$10,000 to \$15,000. If contributions were included for the past five years, this would make it a little more palatable.

SEN. MCNUTT remarked that the intent of the bill was to make this commensurate with other retirement programs. He didn't want any mischief in the law, but was concerned with this proposal.

SEN. JABS stated that someone, who had not been in the habit of putting money away, who started making consistent contributions, may trigger the ruling of intentional planning. Mr. Cadby responded that there are bankruptcy laws in the federal code that limit the amount which can be put into any pension plan that can be accessed by creditors. He added that this bill will level the playing field between pension plans so they are all judgment proof. A judgment could be the result of an unforeseeable future accident.

{Tape : 1; Side : A; Approx. Time Counter : 10.30}

Closing by Sponsor:

SEN. MCNUTT summarized that people are being encouraged to be responsible by putting money away for retirement. Not all people have access to the qualified plans or the 401Ks. He agreed that it may be a good idea to change this to past contributions. If a judgment occurred, the past contributions could be protected while the individual would not be able to put money in an IRA in lieu of paying the judgment. He believed that federal statute would keep the mischief out of this bill.

{Tape : 1; Side : A; Approx. Time Counter : 10.32}

HEARING ON SB 416

Sponsor: SEN. LORENTS GROSFIELD, SD 13, Big Timber

Proponents: None

Opponents: None

Opening Statement by Sponsor:

SEN. LORENTS GROSFIELD, SD 13, Big Timber, introduced SB 416. The proposed legislation was brought to the committee by Greg

Petes, Code Commission. This addresses a Supreme Court decision, State v. Brummer. Mr. Brummer was charged with rape, aggravated kidnaping, and assault. He was acquitted on all counts. Two women were also involved in this case. It appeared that all three people ought to be in jail. Robbery and drugs were involved in the incident. The state brought a lesser charge of kidnaping against Mr. Brummer. After the jury's verdict but before entering judgment, the district court, on its own initiative, notified the parties of its intent to order a new trial.

Current law states that following a verdict or finding of guilty, the court may grant the defendant a new trial if required in the interest of justice. The motion for a new trial must be in writing and must specify the grounds for a new trial. On hearing the motion for a new trial, the court may grant a new trial. Neither party had made a motion for a new trial. The state disagreed. The Supreme Court affirmed the ability of the judge to order a new trial. The state pointed to (2) and (3) and stated that a motion was necessary. The motion needed to be filed by the defendant and it needed to be specific about a new trial. Mr. Brummer's attorney argued that (1) included plain language.

The Supreme Court held that the language of §46-16-702 is anything but plain. The parties relied on particular subsections rather than on the language of the statute as a whole. The fact that (1), (2) and (3) of the statute contain plain language individually does not necessarily mean the statute as a whole is plain. The statute does not specifically require a proper defense motion but, also does not specifically authorize a court to order a new trial without a motion, thus it appears that this statute is ambiguous.

The Court further held that in construing this statute, they cannot ignore the elementary rule in statutory construction. The court held that §1-2-101 states ". . . the office of the judge is simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted or to omit what has been inserted. Where there are several provisions or particulars, such a construction is, if possible, to be adopted as will give effect to all."

The dissenting opinion states that had the legislature chosen to grant the district court the authority to grant a new criminal trial, it would have explicitly set out that power. It is improper that we presume the existence of such a power from the non-existence of language specifically authorizing it.

Everyone agreed that the statute is not clear. The question is whether it should be made clear that the judge can order a new trial or whether it should be made clear that the judge cannot order a new trial. The legislation, SB 416, is drafted to give the court the discretion.

Proponents' Testimony: None.

Opponents' Testimony: None.

{Tape : 1; Side : A; Approx. Time Counter : 10.43}

Questions from Committee Members and Responses:

SEN. DOHERTY added that he had recently submitted a brief to the Supreme Court dealing with the insertion of language in a workers' compensation case.

SEN. HALLIGAN remarked that he would rather have this handled by motion and hearing rather than having judges be activists.

SEN. GROSFIELD related that in the Brummer case, the judge ordered a new trial before anyone had an opportunity to make a motion.

SEN. DOHERTY stated that prior to the verdict, the judge has the authority to declare a mistrial with or without a motion. The question is whether the judge should have that authority after the verdict.

Closing by Sponsor:

SEN. GROSFIELD closed on SB 416.

{Tape : 1; Side : B; Approx. Time Counter : 10.52}

EXECUTIVE ACTION ON SB 153

Motion/Vote: SEN. HALLIGAN moved that SB 153 BE AMENDED - SB015301.agp, EXHIBIT(1). The motion carried unanimously.

Motion: SEN. HALLIGAN moved that SB 153 DO PASS AS AMENDED.

Discussion:

SEN. MCNUTT remarked that the priority would be changing on lien input commodities in agriculture such as fuel, fertilizer, and seed. This will cause a lot of concern in the agricultural community.

EXECUTIVE ACTION ON SB 416

Motion/Vote: SEN. HALLIGAN moved that SB 416 DO PASS. Motion carried unanimously, 8-0.

{Tape : 2; Side : B; Approx. Time Counter : 11.50}

EXECUTIVE ACTION ON SB 372

SEN. HALLIGAN commented that the Clerks of Court Association did not like the language proposed. The amendments, SB037201.avl, EXHIBIT(5), provide that if an agreement was signed, it was not necessary to pay the fee.

Motion/Vote: SEN. HALLIGAN moved that SB 372 BE AMENDED. Motion carried unanimously.

Motion/Vote: SEN. HALLIGAN moved that SB 372 DO PASS AS AMENDED. Motion carried unanimously, 8-0.

{Tape : 2; Side : B; Approx. Time Counter : 124 - 198}

Holly Franz, Women's Law Section

{Tape : 2; Side : B; Approx. Time Counter : 198 - 254}

Opponents:

Corbin Howard, Attorney

{Tape : 2; Side : B; Approx. Time Counter : 254 - 378}

EXHIBIT(7)

EXHIBIT(8)

Stephanie Bousleman, self

{Tape : 2; Side : B; Approx. Time Counter : 378 - 426}

EXHIBIT(9)

Sara Baxter, Clinical Psychologist

{Tape : 2; Side : B; Approx. Time Counter : 426 - 550}

John Summers-Flanagan, Clinical Psychologist

{Tape : 3; Side : A; Approx. Time Counter : 0 - 56}

Gail Galeen, Attorney

{Tape : 3; Side : A; Approx. Time Counter : 56 - 151}

Terry McCumber, Attorney

{Tape : 3; Side : A; Approx. Time Counter : 151 - 259}

EXHIBIT(10)

Informational Testimony:

None

Questions from Committee Members and Responses:

{Tape : 3; Side : A; Approx. Time Counter : 259 - 550}

{Tape : 3; Side : B; Approx. Time Counter : 0 - 394}

Closing by Sponsor:

Senator Grimes made closing statements.

{Tape : 3; Side : B; Approx. Time Counter : 394 - 550}

HEARING ON SB 416

Sponsor:

Senator Grosfield presented SB 416.

{Tape : 4; Side : A; Approx. Time Counter : 0 - 66}

Proponents:

Greg Petesch, Code Commissioner

{Tape : 4; Side : A; Approx. Time Counter : 66 - 87}

Opponents:

None

Informational Testimony:

None

Questions from Committee Members and Responses:

{Tape : 4; Side : A; Approx. Time Counter : 87 - 97}

Closing by Sponsor:

Senator Grosfield made closing remarks.

{Tape : 4; Side : A; Approx. Time Counter : 97 - 135}

Meeting adjourned.

{Tape : 2; Side : A; Approx. Time Counter : 0 - 247}

Closing by Sponsor:

Senator Halligan made closing statements.

{Tape : 2; Side : A; Approx. Time Counter : 247 - 267}

EXECUTIVE ACTION ON SB 404

Motion/Vote: REP. SHOCKLEY moved that SB 404 BE CONCURRED IN.
Motion carried 19-1 with Jore voting no.

{Tape : 2; Side : A; Approx. Time Counter : 267 - 374}

EXECUTIVE ACTION ON SB 416

Motion: REP. YOUNKIN moved that SB 416 BE CONCURRED IN.

Motion/Vote: REP. MOLNAR moved that SB 416 BE AMENDED. Motion carried unanimously.

Motion/Vote: REP. FACEY moved that SB 416 BE CONCURRED IN AS AMENDED. Motion carried unanimously.

{Tape : 2; Side : A; Approx. Time Counter : 374 - 451}

EXECUTIVE ACTION ON SB 233

Motion: REP. AHNER moved that SB 232 BE CONCURRED IN.

Motion/Vote: REP. ANDERSON moved that SB 232 BE AMENDED. Motion carried 19-1 with McGee voting no.

Motion: REP. ANDERSON moved that SB 232 BE CONCURRED IN AS AMENDED.

Motion/Vote: REP. NOENNIG moved that SB 232 BE AMENDED. Motion carried unanimously.

EXHIBIT(4)

Motion/Vote: REP. ANDERSON moved that SB 232 BE CONCURRED IN AS AMENDED. Motion carried 12-8 with P. Clark, Curtiss, Eggers, Gallus, Gutsche, Hurdle, Williams, and Wyatt voting no.

{Tape : 2; Side : A; Approx. Time Counter : 451 - 550}

{Tape : 2; Side : B; Approx. Time Counter : 0 - 433}

EXECUTIVE ACTION ON SB 326

Motion: REP. FACEY moved that SB 326 BE CONCURRED IN.

Motion: REP. ANDERSON moved that SB 326 BE AMENDED.

Motion/Vote: REP. ANDERSON moved that SB 326 BE TABLED. Motion carried 12-7.

Rep. Wyatt absent, no proxy on this vote only.